



November 30, 2001

Mr. Jaime Esparza  
District Attorney  
Thirty-Fourth Judicial District  
201 County Building  
El Paso, Texas 79901

OR2001-5568

Dear Mr. Esparza:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155642.

The Office of the District Attorney, 34<sup>th</sup> Judicial District, received a request for all documents in Cause Number 2001 0D01173. You inform us that you have released basic information from the case report (enclosure 2) in accordance with section 552.108(c) of the Government Code and that you have redacted from the basic information the driver's license number of one suspect as required by section 552.130 of the Government Code and the Criminal Identification Information ("CII") number of another suspect as required by section 552.101 of the Government Code. You claim, however, that the prosecution file in Case Number 2001 0D01173 is excepted from disclosure under section 552.108(a)(2) of the Government Code. We have considered the exceptions you claim, the submitted information, and the comments of the requestor. See Gov't Code § 552.304 (permitting interested party to submit reasons why requested information should or should not be released).

Initially, we note that the submitted information contains documents that appear to have been filed with a court, and we have marked those documents accordingly. Information filed with a court is generally a matter of public record and may not be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992).

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You assert that the requested information pertains to a case that concluded in a result other than conviction or deferred adjudication because the case was dismissed. Therefore, we agree that section 552.108(a)(2) is applicable. Because section 552.108(a)(2) is dispositive, we do not address your other claims.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

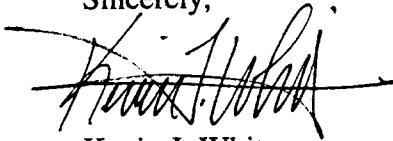
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin J. White', with a horizontal line drawn through the middle of the signature.

Kevin J. White  
Assistant Attorney General  
Open Records Division

KJW/seg

Ref: ID# 155642

Enc. Submitted documents

c: Mr. Robert S. Huscroft, Sr.  
10305 Darin Road  
El Paso, Texas 79925-1611  
(w/o enclosures)